

G. Lovell 17

REMARKS

On a Claim of Captain J. B. Brant, in
reply to a decision and re-
port of the 3d Auditor.

BY

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PREVIOUS to the late war, the allowances of fuel, quarters, transportation, &c. like most of the contingent expenses of Congress and other civil departments of the government, depended upon annual appropriations, which were applied under the direction of the President, or the Secretary of war, according to the exigencies of the service.

On the 3d of March, 1813, congress by law authorised the Secretary of war to make regulations for the several departments of the Staff, as well in regard to their *powers* as *duties*, which regulations, when approved by the President, were to be in force until revoked by the same authority. Regulations were accordingly made, which gave to the officers of the Quarter Master's Department the *power* to provide all transportation, quarters, fuel, &c. for the army, and made it their *duty* to furnish those supplies according to a specified scale or tariff. The regulations conferring those powers, and prescribing those duties, were recognized and adopted by the 9th section of an act of Congress "for reorganizing the General Staff, and making further provision for the Army of the United States," passed the

16th day of April 1816, 'subject to such alterations as the Secretary of War with the approbation of the President' might "adopt."

On the 22d of July 1824, the Secretary of War informed me that the regulations were to be revised, and directed me to report such alterations and amendments as I thought necessary, [see paper marked A.] On the 6th of October 1824, I reported the present regulations of the Quarter Master's Department, with my reasons for the proposed changes—[see paper marked B.] They were examined in the course of that month, and every part approved except the increase of fuel and quarters to Colonels, and that, on the recommendation of General Scott, was ultimately approved.

On the 15th of November 1824, I presented the Estimates for the Quarter Master's Department, based upon the new regulations—they were approved by the department, and Congress appropriated every cent which had been asked for.

But notwithstanding the full powers thus conferred upon the Executive by Congress, both by the laws authorizing the regulations, and that making the appropriation, the 3d Auditor has thought proper to deduct from the accounts of Captain Brant, the sum of forty six dollars and fifty six cents, which had been paid in conformity with existing regulations made in pursuance of the law, to Lieutenant Clark, an assistant Commissary of Subsistence, and thirty eight dollars, being for a kitchen and fuel to which Captain Brant was entitled by the regulations, 1st, as the only officer at the post at which he was stationed, and 2d, as assistant Quarter Master.

It would be difficult to account for the decision of the Auditor upon any known principles of legal construction. The law has given both to Captain Brant and Lieutenant Clark, twenty dollars per month, in addition to their pay in the line. It is known to

the Auditor that the pay of each in the line is thirty dollars per month, and that the additional twenty dollars makes it fifty—and therefore if his reasoning prove any thing, it is that fifty dollars per month is all that either could receive; but that sum is less than their pay and emoluments as Lieutenants, and it is to be presumed that Congress when it charged them with important duties and a heavy pecuniary responsibility, meant to increase, not diminish their compensation. The Auditor gets over this difficulty by involving himself in another. He has admitted part of the charge for transportation by Lieutenant Clark, and part of that for quarters and fuel, by Captain Brant: now if this decision be correct, transportation, fuel and quarters must be *pay in the line*; but all our laws make a distinction between pay, and every kind of emoluments, and I know of no special authority conferred upon the Auditor to depart from the language of the law. The act of the 2d of March 1821, referred to by the Auditor, gives to assistant Quarter Masters and assistant Commissaries, as he has stated, a sum not exceeding twenty dollars per month in addition to their *pay in the line*. If they happen to be Captains, their monthly pay becomes sixty dollars, if Lieutenants, fifty; and that act has left all allowances which are made for the service, where it found them, to be determined by the Executive, and the annual appropriations. Even admit for the sake of argument that the allowances made to those officers are wrong—the wrong is done by Congress in making the appropriation as much as by the Executive in making the regulations, for which act they are accountable to the nation, and not to the 3d Auditor. With the same propriety might the Auditor attempt to controul the Executive in the distribution of the Barracks *erected* by the public, as in those *hired*—if the right exists in the *one* case, it cannot be denied in the *other*.

In this instance, as I have before remarked, the estimates of the department were based upon the existing regulations, and Congress appropriated every cent asked for; this will be seen by an inspection of the estimate and the act making appropriations for the service of the present year. The estimate therefore, having been adopted by Congress, became a part of the law; and the very sums deducted by the Auditor were appropriated for the purposes to which they were applied. Now if the Executive have not the power to apply the appropriations thus made, according to the estimate, on what authority are the numerous contingent expenses of the government, as well at this city as elsewhere paid? The act of Congress establishing the 3d Auditor's Office, allows him for instance \$ 3000 per annum, and the privilege of franking all letters and packages in relation to the duties of his office. These are the only allowances made to him by law—and yet we know that he occupies a *public* building as an office, and that the furniture, fuel, and stationary, for the use of that office are supplied at the public expense. He occupies his office precisely as public quarters are occupied by officers of the army, by the authority of the Executive; and the furniture, fuel, and stationary are supplied, like army allowances, from an annual appropriation, based upon annual estimates. If the allowances of fuel, transportation, &c. to Captain Brant and Lieutenant Clark be wrong, those of furniture, fuel, and stationary to the 3d Auditor must also be wrong, and the Auditor to be consistent should refund the amount expended for those objects; for the *character* of an officer cannot alter *principles*, and that which is *wrong* in the person of an assistant quarter master, or assistant commissary, cannot be *right* in the person of an Auditor.

The Auditor not only applies to the case of certain classes of military officers, principles different

from those which govern in his own case, but he has made a distinction between those officers, when none legally exists.

The present regulations allow an office to Pay Masters; this allowance has no other authority than that of kitchen and fuel to assistant quarter masters, and transportation to assistant commissaries, yet the Auditor has admitted in the accounts of Captain Brant, a charge for an office for Paymaster Wetmore—how this allowance can be right and the other wrong, I am at a loss to divine; for Paymasters are entitled only to the pay and emoluments of Majors of Infantry, and an office makes no part of either. The officers of the Quarter Masters and Purchasing Department are the only officers entitled *by law* to an allowance for office rent—that allowance to all other officers is made by the regulations and the appropriation, and the Auditor can have no other authority for admitting the accounts of Paymasters.

I owe it to myself, and to the officers who serve under my orders, to ask that the question in relation to the regulations be settled, that we may know whether the authority of the War Department and the President, or of the 3d Auditor is to be respected. At present if we refuse to comply with the regulations we subject ourselves to Military punishment, and if we comply, pecuniary losses are inevitable: Truly may we exclaim *misera est servitus, ubi jus est vagum aut incognitum*.



